Points of Dispute

I. "Is the Proprietor of Sree Rama Coffee Supplies, 139/7, Forth Cross, Hanumanthanagar, Bangalore-19, Justified in removing Sri Marisiddaiah from service with effect from 4th October 1976 ?

II. If not, to what relief the workman is entitled ?"

By Order and in the name of the Governor of Karnataka,

J. PILLAPPA,
Desk Officer,
S. W. & Labour Department.
(Labour 'A')

1516—S. O. 1725

RURAL DEVELOPMENT AND CO-OPERATION SECRETARIAT

Notification No. RDC 142 MMD 79
Bangalore, dated 30th June 1979

Whereas by Government Notification No. A & F 37 CMD 60-I, dated 19th July 1960, issued under sub-section (1) of Section 4 of the Bombay Agricultural Produce Markets Act, 1939 (Bombay Act XXII of 1939) the Government of Mysore declared that with effect from the date of publication of this Notification in the **Mysore Gazette** the area of Khanapur Taluka of Belgaum District shall be the market area for the purposes of the said Act in respect of Paddy (husked and unhusked) and Nagali (Ragi) in the said market area.

And whereas by Government Notification No. A & 37 CMD 60-II, dated 19th July 1960 issued under Section 7 of the Bombay Agricultural Produce Markets Act, 1939 (Bombay Act XXII of 1939) the Government of Mysore declared that the Market Committee for the market area of Khanapur Taluka of Belgaum District shall be called by the name of " Agricultural Produce Market Committee, Nandagad "

And whereas by Government Notification No. DPC 93 CMD 67, dated 1st December 1967 issued under sub-section (4) of Section 4 of the Bombay Agricultural Produce

Markets Act, 1939 (Bombay Act XXII of 1939) the Government of Mysore declared that with effect from 26th December 1967 the marketing of Cattle, Sheep and Goats shall be regulated in the market area of the Agricultural Produce Market Committee, Nandagad in addition to the Agricultural Produce already regulated.

And whereas the Government of Karnataka now propose to regulate the marketing of Timber and Firewood (hitherto not regulated) in addition to the agricultural produce already regulated in the said market area ;

And whereas the Karnataka State Agricultural Marketing Board, Bangalore has been consulted on the said proposal ;

Now, therefore, in exercise of the powers conferred by Section 5 read with Section 3 of the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 (Karnataka Act 27 of 1966) the Government of Karnataka declare its intention of regulating the marketing of Timber and Firewood (hitherto not regulated) in addition to the agricultural produce already regulated in the market area of the Agricultural Produce Market Committee, Nandgad.

Any objections or suggestions which may be received in respect of the above said proposal within thirty two days from the date of .publication of this notification in the official Gazette will be considered by the State Government.

Objections or suggestions may be addressed to the Commissioner, Special Economic Programmes and **Ex-officio** Secretary to Government, Rural Development and Co-operation Department, Vidhana Soudha, Bangalore-560001.

By Order and in the name of the Governor of Karnataka,

G. S. JOSHI,
Under Secretary to Government,
Rural Development and Co-opn. Department.

1539—S.O. 1726

GOVERNMENT OF KARNATAKA

SOCIAL WELFARE AND LABOUR SECRETARIAT

Labour Dispute :—Industrial dispute between the Workmen and the Management of The Karnataka State Road Transport Corporation Bellary Division, Bellary.

Award of the Presiding Officer Additional Labour Court, Bangalore, Published.

Read the following Papers :

1. Letter No. 46/79-80 dated 6th April 1979 from Sri N. P. Kempe Gowda, Presiding Officer, Additional Labour Court, Bangalore.

BEFORE THE PRESIDING OFFICER, ADDITIONAL LABOUR COURT, BANGALORE.

Dated .....

PRESENT :

Shri N. P. Kempe Gowda, B.A., B.L.
Presiding Officer.

Reference No. 25 of 1978

First Party :—

Shri H. G. Neralagi s/o Gundappa, aged about 25 years, residing near bus stand, Kudligi, Bellary District

Vs.

Second Party :—

The Management of the Karnataka State Road Transport Corporation, Bellary Division Bellary.

Appearances :—

Sri S. Chamaraya Reddy, Advocate, for the first party.
Sri M. S. Mandanna, Advocate for the second party.

Award

1. This case has arisen out of the order No. SWL 284 LLD 78 dated 25th April 1978 made by the Government of Karnataka in exercise of powers under section 10 (1) (c) of the Industrial Disputes Act, referring the following points of dispute for adjudication to this court :

> "I. Whether the management of K. S. R. T. C., Bellary Division, Bellary are justified in discharging the services of their workman Sri N. G. Neralagi, Conductor, with effect from 5th August 1977.
>
> "II. If not, to what relief the said workman is entitled?"

2. In this court both the parties filed their respective written statements. The court treated the points referred for adjudication as the issues arising in this case for decision. Thereafter evidence produced by both the parties has been taken and arguments addressed are heard.

3. The facts of the case are briefly these :

The first party workman was selected for appointment as a conductor to serve under the second party and he was appointed as such in May 1975 by the Deputy General Manager and Divisional Controller (for short D. G. M. and D. C) Bellary Division. He was serving in that capacity till 5th August 1977 when by an order the D. G. M. and D. C. Bellary discharged him from service on the ground that his work was not satisfactory and therefore he was not suitable for being confirmed as a Conductor. There-upon, the first party workman appeared to the General Manager of the second party at Bangalore, but in vain. Hence he raised a dispute with the Labour and Conciliation Officer, who however, was not successful in bringing about reconciliation. Therefore, he reported the matter to Government who made the reference that has given rise to this case.

4. It is the contention of the first party that his discharge from service is not discharge simplicitor, but that it is punitive inasmuch as his services are terminated for certain misconduct imputed to him, that his services could not have been terminated even before the expiry of the probation period for which he had been appointed, that D. G. M. and D. C 'Bellary Division was not competent to terminate his services that M.G.R.T.D. Standing Orders are applied to him and not the Karnataka State Road Transport Corporation services (Conduct and Discipline) Regulations 1971 (for short C & D Regulations), that even if C & D Regulations applied, the termination of his services without an enquiry as contemplated under Regulation No. 23 of those regulations is illegal, that is the termination of his services if not dismissal for misconduct it is retrenchment under the Industrial Disputes Act, which could not have been carried out without complying with section 25F of that Act, that punishment amounts to double punishment and is, therefore, illegal, that in any case the action of the respondent in terminating his services is *mala fide* or at any rate lacks *bona fides* and therefore it is liable to be set aside and he is entitled to be reinstated with the consequential reliefs of back wages and other benefits.

5. On the other hand, the contention for the second party is that the discharge of the first party from their service is according to the terms of the appointment order that his work was not satisfactory and he was not considered suitable for that post, that his discharge could not amount to dismissel for misconduct, that the M.G.R.T.D. Standing Orders are repealed by the C and D Regulations

which ware brought into force from 19th June 1974 and as per those regulations, the D G. M. and D. C. Bellary was competent to terminate the services of the first party, that no enquiry was contemplated before passing an order of discharge in the case of the first party that the termination of the first party does not amount to retrenchment under the Industrial Disputes Act, that there is no double punishment inflicted on him, that the order of discharge made is not made with any mala fide intention and it does not lack bonafides, and that, therfore, claim of the first party should be rejected.

6. The first party workman examined himself and has produced eight documents in suport of his case. On the other hand no witness has been examined for the second party inspite of reasonable and sufficient opportunity given, but two documents are go marked in evidence. Arguments ware heard on behalf of both the parties in detail. On the basis of the material placed on record. I shall now proceed to record my findings on the points of referred for adjudication and also my reasons therefor.

7 **Point No. 1.**—It is admitted that the first party workman had been appointed in may 1975 under the second party as a Conductor, after he was selected for that post and his appointment was on probation for two years. Ex M-1 is the letter of offer of appointment to him and Ex-M-2 in the letter of acceptance given by him. Ex-W-1 is the appointment order issued to him Ex.W. 3 is the list of candidates selected for appointment and it includes his name. It is clear from the claim statement filed by the first party and also his evidence that during the course of his service 17 default cases had been put up against him. In his claim statement. he has also admitted that his termination was sought to be justified on the ground that he was under suspension for 133 days on four occasions and leave without pay for 14 days. In his evidence also he has admitted that on a number of occasions he had been kept under suspension. It is apparent that on these facts the D. G. M, and D. C. Bellary came to the conclusion that his work was unsatisfactory and that he was not suitable for being confirmed as a Conductor.

8. Before I proceed to consider the justifiability of the order of discharge. I shall first dispose of the point as to whether the D. G.M. and D. C. Bellary Division, was not competent to terminate the services of the first party workman. There can be no doubt that according to the M.G.R.T.D. standing Order which were applicable to the second party only the Deputy General Manager and Divisional Controller, Bangalore Division could pass on order of discharge in respect of an employee of the corporation serving in any Division and appointed by any other D. G. M. and D. C. That was the view taken by our High Court in the case of Devaraj Urs and others Vs. M. S. R. T. C. affirmed by the supreme Court in M. S. R. T. C. and Devaraj Urs and othe s 1976 II LLJ 306. But the contention for the second arty is that the said standing orders are no longer applicable to the

second party since they are repealed consequents on the making of the C and D Regulations for the second party and bringing them into force from 19th June 1974. A copy of those regulations is also produced. But it was contended by Sri K. Subba Rao, learned advocate for the first party that no notification having been issued under Section 13B of the Employment (Standing Orders) Act, the previous standing orders applicable to the M. S. R. T. C. must be held to be in force and not the new C and D. Regulations, I am unable to accept this contention. The copy of the C and D Regulations produced shows that those Regulations were made with the approval of the Government and also notified in accordance with Section 45 of the Road Transport Corporation Act, 1950. In the Devaraj Urs case referred to above, it can be seen that the Supreme Court took the view that unless such Regulations under Section 45(1) of the Road Transport Corporation Act were made and brought into force, the standing orders would continue to apply. When that decision was rendered the C & D Regulations were not yet made. So the view expressed by the Supreme Court itself is clear that when Regulations are made in accordance with the Section 45 of the Road Transport Corporation Act governing the conduct and discipline of the employees, the Standing Order will cease to apply. The notification contemplated in Section 13 B of the Employment (Standing Orders) Act, in my opinion, is the notification contemplated in Seciton 45(1) of the Road Transport Corporation Act making new Regulations with the approval of the Government. Therefore, in my opinion, the erst-while Standing Orders of the M G. R. T. D. no longer applied to this case. In the C & D Regulations, the D. G. M. and D C. Bellary Division was competent to discharge or dismiss the first party workman from service since admittedly he was also the appointing authority. Therefore, I hold that the D. G. M. and D. C. Bellary Division, was competent to discharge the first party workman from service.

9. Now, coming to the most important point viz., whether the order discharging the first party workman made by the second party is justified, as I have already pointed out, he has been discharged on the ground that his work was unsatisfactory and he was not suitable for confirmation as a Conductor. Ex. W 4 is the letter terminating his services. It is stated therein that he had been continued and given chances to show improvement in his work, but as he had not shown adequate improvement, it is found he was not suitable for the job for which he was appointed and therefore, he is discharged. This discharge itself is, according to the condition of appointment in Ex. M-1 which were also accepted by the first party as per his acceptance letter Ex M-2. Condition 1(c) in Ex. M-2 reads as follows :

"His services as Conductor are liable to be discharged at any time without notice if during the period of probation, (i) he is found

unsuitable for the job and does not improve inspite of being cautioned (ii) if he fails to pass the tests prescribed by the Appointing Authority from time to time. (iii) he will also be liable to be discharged without notice if he fails to complete the period of probation satisfactorily".

It is not in dispute that despite the condition as above this court is entitled to take into consideration the circumstances and causes leading to the discharge of the first party workman and examine if those are justifiable. The Supreme Court has ruled in Management of Brook Bond (India) Pvt. Ltd. Vs. Y. K. Lautan AIR 1973 S C. 2634 that even in the case of a probationer whose services have been terminated before the expiry of the probationary period without assigning any reason. in accordance with these terms of contract, an Industrial Tribunal can go into the question of the validity of the order of the termination. The court has also indicated the guide lines to judge the justifiability of the termination of the services of a probationer in accordance with the terms of the appointment. Thus what has, therefore, to be seen is whether the action of the appellant is mala fide or whether it amounts to victimisation of the employee or to a unfair labour practice or is so capricious or unreasonable as would lead to the inference that it has been passed for ulterior motive and is not in bona fide exercise of the power arising out of the contract. So, in this case on hand, I have to see if the action of the second party in terminating the service of the first party workman is mala fide or whether it amounts to victimisation or to an unfair labour practice or is so capricious unreasonable as would lead to an inferance that it has been passed with ulterior motive and is not in bona fide exercise of the power arising out of the contract.

10. Of course, the second party has not led any oral evidence in this case. But, in my opinion, written statements filed by the parties. the admissions made by the first party workman in his deposition would show that 17 default cases were booked against the first party workmen and on some occasions he had been kept under suspension. It is obvious that these led the D. G. M. & D. C Bellary to entertain the opinion that the work of the first party workman was unsatisfactory and that he was not suitable for the post of a Conductor. In this court no material regarding these 17 cases and regarding the suspension of the first party workman has been produced. It is not even contended for the second party that there was any enquiry even of a summery nature held against the first party workman after giving him reasonable opportunity of explaining about his conduct in respect of those cases. Merely because 17 default cases had been booked against him and on some occasion he had been kept under suspensions it cannot be said that, at any rate, there was even a prima facie case against him regarding defalcation of any money collected for the second party or other misconduct in the course of his employment. It is obvious

that the discharge of the first party workman is not discharge simpliciter in terms of his employment condition. But is a discharge by way of punishment for his alleged commission and omissious amounting to misconduct. That being so, the second party could only terminate his services after a reasonable enquiry complying with the basic principles of natural justice and if only he had been found guilty of such misconduct. Admittedly they did not do so. At any rate, it was open to the second party even to produce evidence in this court in proof of any such misconduct on the part of the first party workman justifying the conclusion that he was unsuitable for the post of a Conductor. It is not even stated for the second party that, when the default cases were booked against the first party workman, he had been given an opportunity to defend himself or to offer explanation concerning his conduct in those cases and that explanation was found to be unsatisfactory or unacceptable. Under these circumstances, I am of the view, that the discharge of the first party workman on the ground of on unsuitability is nothing but capricious and arbitrary.

11 At the time of evidence a circular issued by the General Manager of the second party in the matter of assessing the work and worth of probationery employees was produced and marked as Ex. W-7. It is seen from this circular that certain guide lines mostly to comply with the principles of natural justice to justify the inference regarding the unsuitability of a discharged probationery workman had been issued. Though those guide lines are not statutory rules, certainly those are norms set for the second party itself for its guidance and were required to be complied with by the authorities concerned. This circular contemplates close observation of the work of a probationer by the superiors and submission of monthly reports in the prescribed form and in case of any short coming or deficience fund to issue memos to the workman concerned, so that he may have an opportunity of improving his work. There is no evidence in this case showing that the guide lines contained in the said circular had been complied with in the case of the first party workman. In the absence of any such complience, it is to be reasonably inferred that the discharge order on the ground of unsuitability passed against the first party workman is arbitrary and capricious and cannot be substained.

12 Of course, it is not established by evidence or circumstances that the second party acted indictively in the matter of discharging the services of the first party workman and that the said act amounts to unfair labour practices. Malafides cannot by any stratch of imagination be imputed to the D.G.M. and D.C. in discharging the first party workman. Even want of bonafides is not made out by any acceptable evidence Of course, th first party workman came to state that some conductors junior to him have not been discharged and this amounts to discriminatory treatment. But there is nothing

to show that there was any thing against those junior workmen to come to the conclusion That their work was unsatisfactory, but yet they have not been discharged. Under the circumstances, it cannot be held that the first party workman is discreminated against in the matter of discharge and therefore, the order of discharge lacks bona fides.

13. In his claim statement, the first party has referred to the grounds on which he is discharged viz., that he was under suspension for 139 days on four occasions and on leave without pay for 14 days, but that these contentions of the management are without substance. No evidence is produced by the second party even to show that the first party had remained absent without leave and his suspension was also justified by any penalties imposed. Therefore, even this alleged ground of suspension and absence from duty is not established in this court and is not also stated specifically in the counter statement. Therefore, that would not also afford as a justifiable reason for coming to the conclusion that the first party workman was unsuitable for being continued as a Conductor. In the case of J. L. Memtani Vs, Indian Institute of Technology. Delhi 1978 LAB. I. C. 232 it has been held that the court is bound to examine interior and posterior circumstances to determine if the order of termination of the services of a probationer is punitive in nature, It has, been held further that through the order a terminating the services of a probationery Government servant on the fact of it did not contain any stigma, it was held to be punitive in nature, as the decision was based on the ground of certain misconduct. In the same way, in the instant case, through the order of discharge simply states that the work of the first party workman was unsatisfactory and he is not suitable for being confirmed as a Conductor, the circumstances leading to the passing of such order clearly indicate that it is in the nature of a penalty for his alleged misconduct of having been involved in default cases which, of coure, are not in any way shown to be prima facia well founded.

14. For the aforesaid reasons, therefore, I arrive at the conclusion that the termination of the services of the first party workman by the second party is punitive in nature, or at any rate, it is arbitrary andcarpricious and therefore, it is unjustifiable. It is not termination simpliciter.

15. It was also contended for the first party that if the termination of the services of the first party is not for any proved misconduct it would amount to retrenchment within the meaning of section 2 (oo) of the Industrial Disputes Act, and since provisions of section 25F of that Act are not complied with by the second party, the order of termination is liable to be set aside. But I am unable to accept the contention that the termination of the first party workman in this

case amounts to retrenchment It is nobody's case that the termination is, in effect, dispensing the services of a surplus workman. Moreover, I have already found that termination is punitive or at any rate, erbitrary and capricious. It is certainly not one amounting to retrenchment.

16. For the aforesaid reasons, therefore. on the first point I hold that the management of K.S R.T.C. Bellary Divlsion, are not justified in discharging the services of their workman Sri N. G. Naralegi, Conductor, with effect from 5th August 1977.

17. In view of my finding on the first point as above, it must be held that the first party workman is entitled to reinstatement, of course, as a probationer Conductor under the second party. There are no grounds made for not ordering such reinstatement. It is not contended by the second party, that if the reinstatement is ordered, the second party would be put to any hardship and that there would be any dislocation of labour. As regards, the back wages consedering the facts that the first party workmen was only a probationer and also the admitted fact that he had been under suspension on some occasions previously, it is not a fit case wherein full back wages has to be ordered. Of course, the first party workman as WW-1 has stated that he had dependents who were depending on his salary and on account of his discharge, they are put to hardship. He has not stated that he has incurred any loans to maintain himself and his family. I do not think that without earning any thing, he is able to pull on for more than two years. Under the circumstances, I hold that he should be allowed 20% of back wages. Hence, on the second point I hold that the first party workman is entitled to the relief of reinstatement and back wages of 20% of the salary and DA he had last drawn.

(Dictated to the Stenographer, transcribed by him and corrected by me)

N. P. KEMPE GOWDA,

Presiding Officer,
Additional Labour Court,
Bangalore.